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DEPUTY

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

11 BARTELL HOTELS, A California Limited  
 12 Partnership, dba HALF MOON ANCHORAGE,

13 Plaintiff,

14 v.

15 M/Y CLAIRE IRENE, a 1968 Owens Motor  
 16 Yacht of Approximately 40-Feet In Length And  
 17 11-Feet In Beam, Bearing California D.M.V.  
 18 Registration No. CF 8646 ED, AND ALL OF  
 HER ENGINES, TACKLE, ACCESSORIES,  
 EQUIPMENT, FURNISHINGS AND  
 APPURTENANCES, *in rem*,

19 Defendant.

} Case No. 07cv2097-L(BLM)

} IN ADMIRALTY

~~SECOND [PROPOSED] ORDER~~  
 APPOINTING SUBSTITUTE  
 CUSTODIAN AND  
 AUTHORIZING MOVEMENT OF  
 VESSEL

F.R.C.P. Supplemental Admiralty  
 Rules C and E.

21 Plaintiff, BARTELL HOTELS, a California Limited Partnership, dba HALF MOON  
 22 ANCHORAGE (hereinafter "PLAINTIFF"), by and through its attorney, Weiss & Jones,  
 23 L.L.P., having appeared and made the following recitals:

24 1. On or about ~~January 11, 2008~~ <sup>December 6, 2007</sup> PLAINTIFF filed its First Amended Verified

25 Complaint praying that M/Y CLAIRE IRENE, a 1968 Owens Motor Yacht of Approximately  
 26 40-Feet In Length And 11-Feet In Beam, Bearing California D.M.V. Registration No. CF  
 27 8646 ED and all of her engines, tackle, accessories, equipment, furnishings and

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SECOND [PROPOSED] ORDER APPOINTING SUBSTITUTE CUSTODIAN  
 AND AUTHORIZING MOVEMENT OF DEFENDANT VESSEL

Case No. 07cv2097-L(BLM)

1 appurtenances ("DEFENDANT VESSEL"), be condemned and sold to pay PLAINTIFF's  
 2 demands and for other proper relief.

3       2. Pursuant to an Order of this Court upon Application by PLAINTIFF, the Clerk of  
 4 this Court will issue a Warrant for Arrest of the DEFENDANT VESSEL, commanding the  
 5 United States Marshal for this District to arrest and take her into custody and to detain her in  
 6 his custody until further Order of this Court respecting same.

7       3. It is accordingly expected that the United States Marshal will arrest the  
 8 DEFENDANT VESSEL forthwith. Custody by the United States Marshal requires the  
 9 services of one or more keepers, and does not include charges for wharfage and the other  
 10 services usually associated with safekeeping vessels similar to the DEFENDANT VESSEL..

11       4. The DEFENDANT VESSEL is located in a slip among those at PLAINTIFF's  
 12 marina, located at 2131 Shelter Island Drive, San Diego, California. PLAINTIFF has agreed  
 13 to assume the responsibility for safekeeping the said DEFENDANT VESSEL and has  
 14 consented to act as her custodian until further Order of this Court. It will provide, as  
 15 necessary under the circumstances, the following services for the safekeeping of the  
 16 DEFENDANT VESSEL, at a cost not to exceed prevailing rates of the Port, as described  
 17 with further particularity in the Declaration of Richard Bartell:<sup>of San Diego</sup>*filed January 11, 2008:*

18           a. Assume custody of the vessel from the United States Marshal at the place of her  
 19 arrest, and keep her at its Marina until further Order of the Court;

20           b. As soon as possible after assuming custody of the vessel, photograph and/or  
 21 video tape the interior and exterior, and prepare a written inventory of equipment and  
 22 property aboard which is not installed as part of the vessel;

23           c. Periodically inspect mooring lines/fenders to assure safe and secure mooring;

24           d. Periodically as deemed prudent under the existing circumstances, but no less  
 25 than weekly, inspect the vessel for watertight integrity, excessive bilge water and fuel,  
 26 lubricant or other leaks. Where further action beyond those detailed herein is deemed  
 27 necessary to preserve the vessel, PLAINTIFF shall advise counsel, so counsel can seek an  
 28 appropriate order from the Court;

1                   e. Provide additional services such as cleaning, minor maintenance, inspection of  
 2 bottom by a diver for the purpose of cleaning and reporting findings regarding underwater  
 3 hull, metal and zinc conditions, as such services are deemed prudent;

4                   f. PLAINTIFF will operate only machinery described in a proper Court order;

5                   g. Provide other such services as may be required from time-to-time, by further  
 6 order of the Court. All services will be invoiced at rates not exceeding those prevailing in the  
 7 Port of San Diego, and shall be subject to approval by the Court.

8       5. PLAINTIFF, in consideration of the Marshal's consent to the substitution of  
 9 custodian, agrees to release the United States and the U.S. Marshal from any and all liability  
 10 and responsibility arising out of the case and custody of the DEFENDANT VESSEL, her  
 11 engines, boilers, tackle, apparel, furnishings, appurtenances, etc., and all other necessaries  
 12 thereunto appertaining and belonging, from the time the Marshal transfers possession of said  
 13 vessel over to said Substitute Custodian, and further agrees to hold harmless and indemnify  
 14 the United States and the Marshal from any and all claims whatsoever arising out of the  
 15 Substitute Custodian's possession and safekeeping; and

16                  **THEREFORE, IT IS HEREBY ORDERED** that the United States Marshal for the  
 17 Southern District be, and is hereby, authorized and directed upon seizure of the  
 18 DEFENDANT VESSEL, her engines, boilers, tackle, apparel, furnishings, appurtenances,  
 19 etc., and all other necessaries thereunto appertaining and belonging, pursuant to the Warrant  
 20 for Arrest to surrender the possession thereof to the Substitute Custodian named herein, and  
 21 that upon such surrender the Marshal shall be discharged from his duties and responsibilities  
 22 for the safekeeping of said vessel and held harmless from and against any and all claims  
 23 whatever arising out of said substituted possession and safekeeping; and

24                  **IT IS FURTHER ORDERED** that PLAINTIFF be, and is hereby appointed, the  
 25 Substitute Custodian of said vessel to retain the same in its custody for possession and  
 26 safekeeping, with the authority to move the DEFENDANT VESSEL within its marina, for  
 27 the aforementioned compensation and in accordance with the Declaration of Richard Bartell  
<sup>filed January 11, 2008</sup>  
 28 and the recitals herein contained until further Order of this Court; and

1           **IT IS FURTHER ORDERED** that PLAINTIFF's attorney will serve by mail a copy  
2 of said Order to the person(s) believed to be the owner(s) of the DEFENDANT VESSEL.

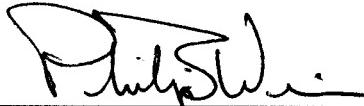
3  
4 DATED: January 30, 2008

*M. James Farney*  
UNITED STATES DISTRICT COURT JUDGE

5  
6 Respectfully submitted

7 on January 10, 2008

WEISS & JONES

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9 By: 

10 Philip E. Weiss, Esq.  
11 Attorney for Plaintiff  
12 Bartell Hotels,  
13 a California Limited Partnership,  
14 dba Half Moon Anchorage

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